Jurisdiction

The petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C. 1254 (1), but respondent herein submits that the Federal District Court and the Court of Appeals had no jurisdiction of the matter.

Question Presented

Contrary to the petitioner's allegation that six questions are here presented, as set forth in the petition herein, there are only two questions actually presented by this petition, *viz.*:

1. Was petitioner deprived by the State Authorities of his freedom of speech without due process of law?

2. Was petitioner deprived, by the State Authorities, of the equal protection of the law in contravention of the Fourteenth Amendment to the United States Constitution?

Statutes and By-Laws Involved

The pertinent statutes and by-laws involved in this matter are:

New York State Education Law, Section 310;
New York State Education Law, Article 125, Section 6202, in part;
By-laws of the Board of Higher Education of the City of New York, Sections 18.4, 18.6 and 18.7.*

Statement

The circumstances which have given rise to this petition encompass events which happened over a protracted period

* These by-laws were numbered Sections 214-a, 216 and 217, prior to April 1959.

beginning with petitioner's entrance as a student into Brooklyn College in 1952, said institution being a public college operated by the Board of Higher Education of the City of New York. He was later suspended twice and finally dismissed for disciplinary reasons. The many separate incidents involved in this matter and the administrative procedures followed by the respondents are set forth in detail in the record before the Court and in the opinions of the Judges of the Courts below; it is, hence, unnecessary to repeat them here.

The issue is essentially whether the public school authorities of a State can take due and proper disciplinary action against a student of a public college without a full trial. It is submitted that if the federal courts have jurisdiction over college disciplinary matters, there is no reason why their jurisdiction would not also extend to the elementary and high schools of the 50 States—all of which is clearly contrary to the Federal nature of our system of government.

Respondents fully realize that expulsion from a college is drastic action, but the record is clear that the action here taken was reasonable and fair and was taken only after long deliberation, painstaking efforts to avoid such action, if possible, and a strict adherence to the statutes and rules of procedure covering such action.

The matter basically has little to do with petitioner's rights under the Fourteenth Amendment to the United States Constitution or the Federal Civil Rights Act, 28 U. S. C. 1343 (3). Although petitioner has asserted that he, as a student, was not treated the same as an "ordinary citizen," there is nothing in the record to sustain this. He can still speak out, and he still enjoys the same civil rights as others but must use language which, though firm, must

reflect the respect due a college president and other authorities from a student who has agreed to abide by the regulations of the college. This is simply a case of a college student who, again and again, broke the rules of the college and, after repeated warnings and two suspensions, was expelled. Each one of us in this free society must live by the law and rules of good order—to do otherwise would not be freedom, but chaos.

The record shows that the public school authorities of the City of New York and of the State of New York took great pains to insure that petitioner was afforded equal protection of the laws and due process. He was at all times apprised of the charges against him, and he was granted ample opportunity to speak in his defense and to submit briefs and memoranda in his behalf.

Any other "ordinary citizen" *while a student at Brooklyn College* would have been treated in the same manner and would have been afforded the same rights of appeal to higher authority within the State in accordance with long-established rules of procedure. Petitioner was not discriminated against. It must be emphasized that contrary to an impression set forth in the dissenting opinion of Chief Judge Clark, he is not barred from seeking to complete his education at other public or private colleges and universities of the State of New York.

Argument

1. The United States District Court did not have jurisdiction of the cause at bar.

   a. Petitioner did not exhaust his atlministrative remedy in the State Courts.

   b. The civil rights statute is not broad enough to serve as basis for the jurisdiction of the Federal

Courts in matters such as the cause at bar, because under the established concept of the comparative functions of State and Federal Courts, the Federal Courts should not preempt matters reserved by their very nature to the State Courts except in most unusual cases. This case does not fall into this category.

2. The record does not show any facts which would support petitioner's claim as to deprivation, without due process of law, of his right to freedom of speech and deprivation of the equal protection of the law.

3. The questions here sought to be raised are plainly unsubstantial because they are foreclosed by previous decisions of this Court on the subject.

I.

The United States District Court did not have jurisdiction over the cause at bar.

It is well established that the providing of public education in this country is a responsibility left to the States. This is not to say, of course, that everybody and everything connected with education in the States can be, or should be, dealt with summarily without regard to personal safeguards afforded by the United States Constitution and the Federal Civil Rights Act. But neither should it be true that anybody can place himself under the jurisdiction of the Federal District Court and the Federal Court of Appeals merely by the bald assertion that his constitutional and civil rights have been violated.

Petitioner invoked the jurisdiction of the District Court under the provisions of subdivision 3 of 28 U. S. C. 1343, which section reads in pertinent part as follows:

"§ 1343. Civil Rights

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

. . . . . .

"(3) To redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Can this statute protect a student in a public college from the consequences of writing letters in which he accuses his superiors of "vile indecencies", "malicious lies", etc.?

Respondents respectfully submit that the United States District Court for the Eastern District of New York did not have jurisdiction over the cause at bar.

1. Petitioner, in a field reserved to the States under the United States Constitution, had a choice of remedies. Under State Law, he could have proceeded to review the determination of the Board of Higher Education in the Supreme Court of the State of New York, under New York Civil Practice Act, Article 78. Instead, he elected to bring an appeal to the Commissioner of Education, under New York Education Law, Section 310. Upon an adverse decision, again, he could have sought a review of the Commissioner's decision, under Article 78 of the New York Civil Practice Act. While the language of said Section 310 makes such decisions "final and not subject to review in any court or place whatever", the New York Court of Appeals has held that such decisions are nevertheless reviewable if they are "purely arbitrary" (*Board of Education and*

Board of Higher Education v. *Allen*, 6 N. Y. 2d 127, May 1959).

Petitioner had a further choice of remedies, in that, instead of seeking a review of the action of the Board of Higher Education by the State Supreme Court, or the Commissioner of Education, he could have, *directly*, sought relief from the United States District Court. This he did not do, however. *Hence the question of direct and initial jurisdiction of the United States District Court in a matter such as this, is not here at issue.* Hence, petitioner is barred by the fact that he did not exhaust his remedies in the State Courts, and is barred by his election of remedies.

2. It is submitted, further, that the United States District Court has no jurisdiction in matters such as this, for another reason. In this respect, Judge Gibson's reference to Judge Wyzanski's opinion in *Cranney* v. *Trustees of Boston University*, 139 F. Supp. 130, is very much in point.

The existence of a federal or constitutional question is the subject of many judicial decisions covering a long period of time. It may be correct that all judicial precedents may not be reconciled, but it seems to be well recognized that where a remedy exists in state court concerning a matter primarily of state law, the federal courts will hesitate to assume jurisdiction under the principles of comity.

Defiance Water Co. v. *Defiance*, 191 U. S. 184;
Shanks v. *Bunting Mfg. Co.*, 9 F. 2nd 116;
New Orleans v. *Benjamin*, 153 U. S. 411, 424.

It must be remembered that "Education is a field of life reserved to the individual states", in the words of Judge Gibson, below. The Education Law of New York, by Article 125 thereof, established public colleges in the City of New York, the admission to, attendance at, and discharge from

which is regulated by conditions set by the Board of Higher Education—there is, therefore, no grant of federal rights here involved. Consequently, the State judicial machinery is the proper forum unless intentional or purposeful discrimination has been used against petitioner—and that the record clearly shows not to have been the case (see *infra*).

II.

The record does not show any facts which would support petitioner's claim as to deprivation, without due process of law, of his right to freedom of speech and deprivation of the equal protection of the law.

Even if jurisdiction existed in the lower federal Courts, it is respectfully submitted that the petition herein, upon the record, fails to show a deprivation under color of any State law, statute, ordinance, regulation, custom or usage, by the respondents, of any right, privilege or immunity secured to petitioner by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. In order for petitioner to succeed, there must be some showing that there actually was such deprivation. In the petitioner's allegations and the record such showing is noticeably lacking. All that is really evident is that petitioner got into trouble with the school authorities, went too far, was expelled and now regrets it.

There is no showing that the petitioner's constitutional or civil rights were in any way violated by the city or State school authorities acting in this matter, or that he was deprived of, or denied, due process or equal protection of the laws in the proceedings before city and State school officials, including his appeals to the respondent Commis-

sioner of Education. In fact, the record reveals a careful effort on the part of all of said officials to preserve his rights.

It is respectfully submitted that there is no constitutional nor any other federally grounded right of any citizen, much less of a student in a public institution of higher learning who has agreed to abide by the rules and regulations of such institution, to accuse his superiors of "vile indecencies", "blatant injustices", "sham and disgrace", "punitive intimidation", "deliberate and malicious lies", whether or not such accusations are contained in letters addressed to one's superiors or whether they are contained in communications broadcast to large groups of persons.

Nor is there a constitutional right or any other federally grounded right, for a student in such an institution to disregard directives reasonably designed for his own protection and improvement, merely because the student disagrees with such directives.

We are not here dealing with a student who in reasonable terms and respectful language disagrees, however strongly, with certain policies and usages of his college and brings these matters forcefully to the attention of his superiors. To do so, under proper circumstances and in proper language, according to the record herein, was and is considered by the college to be a student's right and a part of the citizenship education process encouraged by the college.

The difficulty with petitioner appears to be, in the words of Judge Gibson of the Court below, that he is too "highly adverbial". The record shows quite clearly that petitioner's behavior over the period of his attendance at the college was improper in a great many respects.

On the procedural side, petitioner was given every opportunity to present his views, to speak in his own behalf and to submit any materials that he wished. It must be remembered that petitioner was only one out of approximately 8000 students at that institution.

The record is replete with instances in which officers and faculty of the college went considerably out of their way to accommodate petitioner and to assist him in overcoming his difficulties.

Petitioner was present and was heard in his own behalf at a hearing held by the Faculty Committee on Orientation and Guidance of Brooklyn College, which said committee unanimously recommended to the Faculty Council that he be dismissed from the college.

Petitioner thereafter, on February 19, 1957, was afforded a hearing before the Board of Higher Education of the City of New York, which upheld the decision of the Faculty Council.

Thereafter petitioner commenced his appeal to respondent Commissioner of Education by the filing of his petition. An answer was filed, a copy of which was served upon him, whereupon petitioner filed a rejoinder together with various supporting documents. On June 13, 1957 petitioner was given an opportunity for oral argument, at which time both he and the Board of Higher Education argued their respective positions. Petitioner was afforded an opportunity to file whatever papers he wished, and was served with a copy of every paper submitted to respondent Commissioner by the Board of Higher Education.

Thereafter respondent Commissioner, after a thorough study of the entire record, dismissed the appeal.

Petitioner thereafter moved to reopen the decision of respondent Commissioner on the grounds that there was available new material evidence not available at the time of the original proceeding and that the decision of respondent Commissioner was rendered under a misapprehension as to the facts. Again, respondent Commissioner carefully studied the entire record and petitioner's moving papers, after which, on October 16, 1957, petitioner's motion to reopen was denied.

The procedure used on appeals to respondent Commissioner under Section 310 of the New York Education Law has been upheld consistently in the Court of Appeals of the State of New York and by this Court (see *Matter of Kubaft*; 52 State Dept. Repts. 59, 246 App. Div. 886, appeal dismissed 271 N. Y. 629, reargument denied 272 N. Y. 508, certiorari denied 300 U. S. 657; rehearing denied 300 U. S. 687; *Matter of O'Brien*, 3 A. D. 2d 321, 3 N. Y. 2d 881, 4 N. Y. 2d 140; motions for leave to appeal denied 6 A. D. 2d 745 and 5 N. Y. 2d 707; motion for reargument denied 6 N. Y. 2d 882; appeal dismissed *sub nomine Murphy* v. *Commissioner of Education*, and certiorari denied 4 L. ed. 2d 154, November 23, 1959).

The Commissioner of Education, in deciding the appeals, followed all constitutional and statutory requirements as well as the requirements of his own rules of practice which he had adopted. Plaintiff was afforded a complete opportunity to file whatever papers he wished. A copy of every paper filed by the Board of Higher Education was also served upon the plaintiff. The parties were afforded full opportunity to argue the matter orally before the Commissioner, and his decision was rendered only after the Commissioner had caused the record before him to be

examined with great care. The judicial proceedings and determination before and by the Commissioner have been held to be constitutional and, further, since the plaintiff elected his remedy, it is impossible for him to show that any right, privilege or immunity guaranteed to him by the Constitution of the United States or an Act of Congress has been denied him. Plaintiff has been granted exactly the same rights and the same privileges and has been treated in exactly the same manner as would any other person who brought an appeal to the Commissioner of Education.

It is, consequently, respectfully submitted that the record herein is barren of any right, privilege or immunity grounded in the Constitution or the Laws of the United States of which he has been deprived.

It is realized, of course, that petitioner never had a full trial. In addition, however, to the cases set forth above, in which the question of the need for a trial on appeals to the Commissioner of Education was decided adversely to a contention therefor, both by the Court of Appeals and by this Court, it must be pointed out that it would be completely impossible for a college with 8000 students to provide a full trial, including hearing stenographer, examination and cross examination of witnesses, for all the disciplinary procedures which obviously become necessary in an institution of such size.

It is pointed out, however, that the record clearly shows that petitioner at all times was given sufficient information to indicate exactly where he had failed to comply with rules, regulations and directives, by numerous letters and numerous personal conferences at which both he and his parents were present, and that he, at all times, was given

a fair opportunity to defend himself, to explain his viewpoints, to correct his mistakes and to be accepted back into good standing in the college.

It is respectfully submitted that all the requirements of due process and of the equal protection of the laws were afforded to petitioner at all times herein.

III.

The questions here sought to be raised are plainly unsubstantial because they are foreclosed by previous decisions of this Court on the subject.

The gravamen of petitioner's grievance is his claim that he was entitled to a full trial before the various educational authorities.

On this point the finding of a substantial federal question is foreclosed by decisions of this Court which have already determined this issue.

Levering & Garrigues Co. v. *Morrin*, 289 U. S. 103;
Water Service Co. v. *Redding*, 304 U. S. 252.

The Court of Appeals of the State of New York has held that no trial is required on appeals to the Commissioner of Education (*O'Brien* v. *Allen*, 4 N. Y. 2d 140). This determination was upheld by this Court, *sub nomine Murphy* v. *Commissioner of Education*, 4 L. ed. 2d 154. This determination is in line with previous decisions of this Court to the same effect:

U. S. v. *Nugent*, 346 U. S. 1;
Anderson Nat. Bank v. *Luckett*, 321 U. S. 233, 246;
Matter of Kabatt, 300 U. S. 657; rehearing denied, 300 U. S. 687.

Since the record shows that petitioner was given every possible chance to understand the nature of his behavior, as viewed by the college authorities, every possible chance to correct his behavior, including a conditional reinstatement, and since the regulations and directives were clear and reasonable in all respects, and since he had every opportunity to be heard, to submit documentary evidence, pleadings, affidavits, statements and briefs, all through these proceedings, it cannot be said that there was present here, any "element of intentional or purposeful discrimination". Thus, petitioner's claim in this respect is foreclosed by *Snowden* v. *Hughes*, 321 U. S. 1, 8, and cases there cited; *Spampinato* v. *M. Breger & Co. Inc. et al.*, 270 F. 2d 46; *Equitable Life Assurance Society* v. *Brown*, 187 U. S. 308, 311.

The suspension of a student at the University of Maryland for refusal to obey reasonable regulations of the University was upheld by this Court as not raising any substantial federal question, even though in that case a serious point of conscientious religious conviction was urged on behalf of the student's refusal—which is wholly absent in this case.

Coale v. *Pearson et al.*, 290 U. S. 597.

Similarly, a state statute prohibiting students at the University of Mississippi from belonging to Greek letter societies and fraternities was upheld by this Court against the same claim of violation of the due process of law and of the equal protection of the law clauses of the Fourteenth Amendment.

Waugh v. *Mississippi University*, 237 U. S. 589.

Again this Court upheld the power of the governing body of a public university (California) to require, as a condi-

tion of admission thereto, or retention therein, students to take courses in military training, even against religious and conscientious convictions. Thus, this Court again affirmed the power of a State, through appropriate agencies, to prescribe reasonable regulations for admission to, and retention in, public institutions of higher learning.

Hamilton et al. v. Regents of the University of California et al., 293 U. S. 245.

On the basis of all these decisions, it is respectfully submitted that it is no longer open to argument in this Court, that a State, through appropriate agencies, has the right to enact reasonable regulations relating to the behavior of students in public colleges and universities, and that as long as no purposeful or intentional discrimination is practiced thereunder against individuals, or groups of individuals, no substantial federal question can arise from reasonable disciplinary proceedings in which, as here, all possible procedural safeguards are used, short of a full trial.

IV.

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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